

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99239 / December 26, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6515 / December 26, 2023

INVESTMENT COMPANY ACT OF 1940
Release No. 35082 / December 26, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21820

In the Matter of

**CHINGYUAN “GARY”
CHANG**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934, SECTIONS 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Chingyuan “Gary” Chang (“Respondent” or “Chang”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these

proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities and Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of Chang’s fraudulent misappropriation of brokerage customer and advisory client assets while employed as a registered representative and investment adviser representative at a large financial institution registered with the Commission as a broker-dealer and an investment adviser (“Financial Institution A”).

2. From September 2021 through June 2022 (the “Relevant Period”), Chang misappropriated approximately \$58,560 from four customers and/or clients by initiating unauthorized Automated Clearing House (“ACH”) disbursements from their accounts at Financial Institution A to his personal accounts at two online payment applications. In some of the instances, Chang sold securities in the customer accounts shortly before making the fraudulent transfers to himself. As a result of the conduct described herein, Chang willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act.

Respondent

3. **Chang**, age 54, is a resident of Fremont, California. Chang was a registered representative and investment adviser representative at the Cupertino, California office of Financial Institution A from January 2016 until he was terminated in July 2022 in connection with the misconduct described herein.

Facts

4. While working for Financial Institution A, Chang acted as both a registered representative of the broker-dealer on customer brokerage accounts and as an investment adviser representative of the investment adviser on client advisory accounts.

5. Among other accounts, Chang handled accounts for three brokerage customers (“Investor A,” “Investor B,” and “Investor C”) and one individual who was both a brokerage customer and an advisory client (“Investor D”) (collectively the “Investors”).

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. Between September 2021 and June 2022, Chang misappropriated a total of approximately \$58,560 from the Investors via 40 unauthorized ACH transfers to accounts in Chang's name at two online payment applications ("Online Payment Application A" and "Online Payment Application B"). Without the Investors' knowledge or authorization, Chang initiated each of the 40 unauthorized ACH transfers by entering the Investors' account information at Financial Institution A as the payment instructions to Online Payment Applications A and B, which in turn electronically transmitted those instructions to Financial Institution A using the ACH system. In doing so, Chang took advantage of the fact that Financial Institution A did not require an authorization from Financial Institution A account holders to process the ACH withdrawals initiated by third parties like Online Payment Application A and Online Payment Application B.

7. In total, Chang misappropriated over \$7,900 from Investor A's brokerage account, \$5,800 from Investor B's brokerage account, over \$18,100 from Investor C's brokerage account, and over \$26,700 from Investor D's advisory and brokerage accounts.

8. As part of his scheme, Chang misappropriated from the Investors' accounts after selling securities in their accounts. For example, on December 1 and 2, 2021 Chang sold mutual fund and stock shares from Investor A's account for proceeds of approximately \$413,000; on December 2, 2021, he also misappropriated \$2,500 by initiating an ACH transfer from Investor A's account to an account in Chang's name at Online Payment Application A. On December 17, 2021, Chang sold mutual fund shares from Investor C's account for proceeds of approximately \$35,000; three days later, on December 20, 2021, Chang misappropriated \$2,500 by initiating an ACH transfer from Investor C's account to an account in Chang's name at Online Payment Application A. Similarly, on February 14, 2022, Chang sold mutual fund shares from Investor B's brokerage account for proceeds of approximately \$3,000; the same day, he initiated an ACH transfer of \$1,200 from Customer B's brokerage account to an account in Chang's name at Online Payment Application A.

9. Chang also took steps to attempt to conceal his misconduct. In December 2021, after Chang had misappropriated a total of \$6,410.22 from Investor A's brokerage account through three ACH transfers, Investor A inquired about unusual cash activities in the account. Chang then sent an ACH transfer of \$6,410.22 from his account at Online Payment Application A to Investor A's brokerage account in an attempt to conceal his misconduct. This transfer was funded by Chang's misappropriations from other Investors in December 2021. Moreover, Chang continued to misappropriate from the Investors until June 2022, shortly before Financial Institution A began an internal review into Chang's misappropriation in July 2022.

10. After Financial Institution A began an internal review into Chang's misappropriation, Chang acknowledged that he misappropriated from customer and client accounts and in late July 2022 paid Financial Institution A the net aggregate amount that he misappropriated from the Investors to compensate Financial Institution A for the amounts that it had repaid to the Investors.

Violations

11. As a result of the conduct described above, Chang willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

12. As a result of the conduct described above, Chang willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for any investment adviser to employ any device, scheme, or artifice to defraud any client or prospective client, or to engage in any transaction, practice, or course of business that operates as fraud or deceit on any client or prospective client.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Chang's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act it is hereby ORDERED that:

A. Respondent Chang cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent Chang be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a

Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay a civil money penalty in the amount of \$58,560.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payments shall be made in the following installments: \$14,640 within 14 days of the entry of the Order, \$14,640 within 120 days of the entry of the Order, \$14,640 within 240 days of the entry of the Order, and \$14,640, plus all accrued interest, within 360 days of the entry of the Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Chingyuan "Gary" Chang as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Tejal Shah, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100 New York, NY 10004-2616.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary